

# U.S. Department of Labor

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Issue date: 15Oct2002

*In the matter of*  
**Jeremiah Daniels**  
Claimant

v.

Cases Nos.      2001 LHC 1870  
                         2001 LHC 3143

**Oceanic Stevedoring Co.**  
Employer

and

**Eller-ITO Stevedoring Company**  
Employer

and

**Signal Mutual Indemnity  
Association, Ltd.**  
Carrier

## **DECISION AND ORDER** ***APPROVING STIPULATION***

This proceeding involves a claim for benefits under the Longshore and Harbor Workers' Compensation Act, as amended, 33 U.S.C. §§901, et seq., (the "Act"), and the regulations promulgated thereunder. Originally, the Claimant had separate claims against the above-captioned Employers. However, due to the common questions of law, coupled with the fact that each claim had been transferred for formal hearing, the claims were thereafter consolidated into a single case.

The Claimant is represented by Howard L. Silverstein, Esquire, of Miami, Florida. Lawrance B. Craig, III, Esquire, of Miami, Florida, represents the Employer, Oceanic Stevedoring Co., and its Carrier in regard to the injuries arising out of Claimant's October 12, 1999 incident. Additionally, James W. McCready, II, Esquire, of Miami, Florida, represents the Employer, Eller-ITO Stevedoring Company, and its Carrier in regard to the injuries arising out of Claimant's alleged June 22, 2000 incident.

Because this matter involves two (2) separate claims that were later consolidated, counsel for the Employers each submitted the following:

1.      Application for Approval of Agreed Settlement;
2.      Proposed Order;
3.      Petition for Attorney's Fees; and

4. An itemization of Hours and Costs prepared by the Claimant's counsel.

The parties in *Jeremiah Daniels v. Oceanic Stevedoring Co. and Signal Mutual Indemnity Association*, OWCP No: 6-180911, have stipulated to the following:

### **I. Disputed Issues**

This claim has been vigorously disputed from its inception as the Employer/Carrier contended that the Claimant could return to work, full-duty, or alternatively, that the Claimant would work in a sedentary-type position, while the Claimant alleged that he was permanently, partially, or totally disabled as a result of the October 12, 1999 incident.

This case has been consolidated with a separate claim, OWCP No. 6-182891, and OALJ No. 2001-LHC-1870, involving a subsequent accident while the Claimant was employed by Eller-ITO Stevedoring Company on June 22, 2000. The Claimant also was involved in an incident wherein he was assaulted on July 16, 2000. The attendant issues with respect to these multiple incidents include whether the Claimant sustained a loss of earning capacity after the October 12, 1999 accident when he returned to work for Eller-ITO, and whether that alleged earning capacity loss could reasonably be expected to continue even if he was not assaulted on July 16, 2000. A further issue was whether the assault was a supervening, superceding incident so as to cut off all entitlement to compensation benefits for a temporary total disability, or temporary partial disability, since the Claimant had not apparently yet reached maximum medical improvement from the June 22, 2000 accident at Eller-ITO.

### **II. Agreed Statement of Fact**

1. **Date and Description of Incident:** On October 12, 1999, Mr. Daniels was struck in the face by an iron hook, causing him to fall into a pile of lumber, resulting in a claim for neck and back injuries.
2. **Nature of Injury (including degree of impairment and/or disability):** The Claimant asserts that, as a result of his accident, he suffered injuries to his neck and back, and was assigned a 10% whole body impairment by Dr. William V. Tejeiro for neck and back injuries relating to the initial October 12, 1999 incident. Claimant has also complained of headaches and dizziness since the accident, however, the physical head examination of Steven Tarkan, M.D. revealed essentially normal results, and Dr. Tarkan doubted that the Claimant had any serious sinus pathology.  
Gaetano J. Scuderi, M.D. performed an orthopedic independent medical examination and found that the Claimant was a symptom magnifier, and had no objective findings to substantiate any of his subjective complaints.  
Alan Herskowitz, M.D. performed a neurological IME, finding that the Claimant had

longstanding chronic degenerative changes for his neck and back that could not be attributed to the accident of October 12, 1999, and otherwise, upon examination, did not find any neurologic deficits.

**3. Description of medical care:** (See Composite Exhibit "A" for all pertinent medical

reports): The Claimant sought medical care at the Cedars Medical Center emergency room on October 13, 1999. Mr. Daniels' chief complaint was swelling to the nose, as a result of being struck on the nose with a 10-pound metal bar at approximately 10:00 p.m., while working the prior evening. The Claimant reported no loss of consciousness, and he also denied any neck pain or visual problems. Mr. Daniels' past medical history was noted to be unremarkable except for a previous surgery for inguinal hernia repair.

John E. Braden, M.D., the emergency department physician, diagnosed a contusion of the nose, noting swelling and tenderness. Mr. Daniels was discharged in stable condition the same day and advised to take Advil.

On May 2, 2000, William V. Tejeiro, M.D., examined the Claimant and reviewed a lumbar MRI scan which, according to Dr. Tejeiro, failed to reveal evidence of acute disc herniations. A cervical spine scan revealed diffuse posterior bony spondylosis prominent at C4-5 and C5-6, with a bulging annulus fibrosis producing significant flattening of the thecal sac and flattening of the cord more prominent at the C4-5 level. Dr. Tejeiro specifically noted, however, that there was no gross herniation. He concluded that the MRI findings were consistent with an inflammatory radiculopathy due to the inflammation caused by the acute injury of October 12, 1999, and the disc bulge in conjunction with the bony spondylosis producing a functional stenosis and compression of the nerve root at C4-5 causing the left upper extremity radiculopathy.

Upon a physical examination, Dr. Tejeiro found, on May 2, 2000, that the lumbosacral spine was no longer symptomatic with no complaints of pain to palpation, and there was a negative straight leg-raising test. Deep tendon reflexes, sensation, and vascular status were grossly intact. There was also no evidence of cauda equina syndrome, which would be, by definition, a dull aching pain at the area of the end of the lumbar spine generally radiating in a sciatic fashion due to compression of the spinal nerve roots.

Notwithstanding his negative findings, Dr. Tejeiro diagnosed cervical area whiplash; torticollis; disc bulge and radiculitis at C4-5 and pre-existing bony spondylosis at the C4-5 level, resulting in a 10% total body impairment rating to the body as a whole "with minimal symptoms at this time."

Raul Grosz, M.D. initially examined the Claimant in connection with a prior injury occurring on August 12, 1997, where the Claimant struck his head and reported loss of consciousness, along with headaches and lightheadedness. The Claimant was seen subsequently by Dr. Grosz on November 9, 1999, in connection with the October 12, 1999 incident. Dr. Grosz found that the Claimant's neurological examination was normal at that time. Dr. Grosz has testified in this case, and explained that the neurological examination of 1999 was essentially the same as the previous one from his initial examination in 1997 for the prior accident. Dr. Grosz also testified that an MRI of the brain did not show any clinical findings of damage as a result of the subject 1999 accident. Due to the fact that the findings in

the MRI of the brain were diffuse and scattered, rather than isolated to a particular area, Dr. Grosz could not say if the changes were traumatically induced. Dr. Grosz also testified that the Claimant's March 27, 2000 cervical spine MRI revealed spondylosis, a degenerative condition, which pre-existed both Mr. Daniels' 1999 and 1997 accidents. Thus, there was nothing on the 2000 cervical spine scan which indicated any new injury, according to Dr. Grosz.

The Claimant, as indicated above, was involved in a subsequent work-related incident on June 22, 2000, wherein he allegedly injured his neck and his head, resulting in a significant amount of treatment, and permanency ratings from Dr. Tejeiro and Dr. Gelbard as more fully described below.

In addition and quite significantly, as reported to Gaetano Scuderi, M.D., the Claimant was physically assaulted by four (4) assailants, who beat the Claimant into unconsciousness, striking him about the head numerous times. Medical records from Parkway Regional Medical Center involved the Claimant's assault of July 17, 2000. Mr. Daniels' complaints included headaches on the right side, with a poor recollection of events. He denied any neck pain. A CT scan of the Claimant's head revealed no intracranial hemorrhage or mass lesions. X-rays of the Claimant's cervical spine revealed no acute fractures or dislocations.

Steven Gelbard examined the Claimant on July 28, 2000, and noted the aforementioned physical assault, and Mr. Daniels complained of headaches at that time. The physical examination, including the neurological portion, was indicated to be normal, with normal range of motion of the cervical spine and little muscle spasm. By August 25, 2000, however, the Claimant's neck pain was radiating into his shoulders, and he had decreased range of motion above the neck. Dr. Gelbard described an MRI of the brain dated November 2, 1999 as essentially unchanged from a previous scan. However, the MRI of the cervical spine dated December 5, 2000 showed congenital stenosis of the canal with herniations at C3-4 through C6-7. As a result of the significant spinal canal stenosis, and the complaints consistent with cord compression, Dr. Gelbard recommended an anterior cervical discectomy and fusion of C4-5 and C5-6.

Dr. Gelbard, who prepared a report on May 1, 2001 where he opined that the Claimant had a 20% impairment to the body as a whole, based on 7% for herniated discs about the cervical spine; 4% for cervical radiculitis; 5% for the body as a whole for loss of grip strength in both hands; and 4% for chronic lower back pain with sacrolitis secondary to lumbar compression fractures.

In addition, Dr. Steven Tarkan, an ear/nose/throat specialist, examined the Claimant on December 6, 1999. Although the Claimant complained of losing consciousness for several seconds after the incident and complained of headaches and dizziness since the accident, Dr. Tarkan found that the physical examination was essentially normal, and he doubted that the Claimant had any serious sinus pathology.

Gaetano J. Scuderi, M.D., performed an IME on May 9, 2002. Dr. Scuderi essentially found that the Claimant was a symptom magnifier. Dr. Scuderi's first diagnosis was that of lumbar contusion. He noted that Mr. Daniels had chronic back pain, but had no objective findings to substantiate any of his subjective complaints. Noting a normal MRI scan documenting no evidence of mechanical findings, Dr. Scuderi opined that no diagnostic testing or therapeutic treatment was medically necessary or indicated. He also indicated that further

treatment of the lumbar spine would be superfluous; medically unindicated; and would constitute over utilization.

Dr. Scuderi's second diagnosis was that Mr. Daniels had pre-existing cervical stenosis secondary to congenital phenomenon, as well as multiple previous traumatic injuries. Dr. Scuderi specifically noted that the accident in question did not aggravate, "or to be more specific, cause a further degeneration as evidenced by the numerous MRI scans."

Significantly, Dr. Scuderi found that the most significant injury was, in his opinion, the assault which occurred on July 17, 2000, where Mr. Daniels was struck numerous times while unconscious. Dr. Scuderi reported that there was a significant protective element to the muscle and bone structure of the spine of a conscious individual that is quite obviously absent in someone who is unconscious. Dr. Scuderi found that there were significant cervical injuries as a result of the subsequent beating by assailants, which continued as Mr. Daniels was lying unconscious.

Dr. Scuderi also found that Mr. Daniels was, and had been, at maximum medical improvement secondary to the laceration of his face, and injury to his cervical spine with no evidence of accelerated degenerative changes of the cervical spine, so the neck injury would not be ratable since he had a significant prior medical history.

Mr. Daniels was also at maximum medical improvement with respect to the lumbar spine with no impairment evidenced by the fact that the MRI was normal for the patient's age, and that there were no objective findings on the physical examination.

Mr. Daniels attended an IME with neurologist Alan Herskowitz on May 1, 2002. Dr. Herskowitz found that Mr. Daniels had a very long history of chronic and recurrent neck and back pain. The main residual problem, subjectively, seemed to be the low back area, according to Dr. Herskowitz. Dr. Herskowitz opined that he did not feel that the accident of October 12, 1999 stood out as the primary neurologic problem. On his examination, Dr. Herskowitz did not find any neurologic deficits. Mr. Daniels' complaints were noted to be more subjective and of a soft tissue nature. Dr. Herskowitz found that Mr. Daniels had long-standing chronic degenerative changes of his neck and back that could not be attributed to the accident of October 12, 1999.

The Claimant has experienced a significant amount of prior injuries. He has testified during two depositions taken on May 15, 2001, and January 29, 2002, that he was involved in an automobile accident occurring in 1992, causing injuries to his neck and lower back, resulting in the Claimant missing "a few months" of work.

The Claimant testified that he was involved in a 1994 motor vehicle accident which caused him to miss approximately two or three months of work due to neck and back injuries. He also testified that in 1997, he struck his head on a ship causing him to require stitches, and injuries his back and neck, and received treatment for these injuries.

Various medical records also reveal Claimant's prior medical conditions. On September 20, 1997, the Claimant reported to Jay G. Stein, M.D., that in 1992, he was involved in the aforementioned motor vehicle collision where he had seen Dr. Moise for a significant period of time and missed several months of work. The Claimant stated that he had improved, yet did not become asymptomatic, but did return to work with symptoms around that time.

Subsequently, the Claimant reported that he was injured, once again, in another motor vehicle accident in 1994. Again, he returned to Dr. Moise and received treatment for a "good period of time;" he stated that he missed some two to three months worth of work.

The Claimant injured his neck and back on a third occasion as discussed above from his deposition testimony while he was working at the Port of Miami on June 20, 1997. Raul Grosz, M.D., treated the Claimant in connection with this incident, and found that Mr. Daniels had to scramble out of the way of a gantry. When he fell, striking his head, forcibly knocking himself unconscious, he suffered a concussion. It was noted that Mr. Daniels had subsequent headaches, light-headedness and might have had a post-concussive syndrome.

Mr. Daniels underwent an MRI of the brain which showed multiple areas of signal hyper-intensity, subcortical and periventricular white matter of both cerebral hemispheres.

The Claimant was treated by Irwin M. Potash, M.D., at the Port of Miami Medical Clinic beginning on June 24, 1997. At that time, Mr. Daniels was diagnosed with a contusion to the head, neck sprain, back aggravation, and laceration to the forehead. Mr. Daniels was placed on a no-work status, and was referred for physical therapy treatment.

The Employer and Carrier had also discovered through their investigation that the Claimant was involved in a prior work-related incident reported by Signal Administration, Inc., requiring medical treatment on November 14, 1992, while working for Continental Stevedoring. In this incident, the Claimant's feet were caught between a belt and rollers causing trauma to the feet and lower legs.

**4. Compensation Paid:** Temporary total disability payments have been paid from October 14, 1999 through December 16, 1999 at the compensation rate of \$370.41, for a total of \$3,386.61.

**5. Terms of Settlement:** The Claimant and the Employer/Carrier have agreed to resolve all allegedly past due benefits, and the Claimant has further agreed to waive his right to any future Longshore & Harbor Workers' indemnity or compensation benefits payable as a result of this claim in return for the Employer/Carrier agreeing to pay the Claimant \$55,000.00. The Employer and Carrier also agree to pay William V. Tejeiro, M.D., \$5,000.00 for his medical services. This sum represents any and all potential or temporary total or temporary partial disability compensation, wage loss benefits, permanent partial or permanent total disability compensation, and rehabilitation benefits under the *Longshore & Harbor Workers' Compensation Act*, to which the Claimant might presently be entitled, or to which he may, in the future, become entitled, as well as any rehabilitation efforts to which the Claimant might become entitled to receive from the Employer and/or its Carrier, under the provisions of the *Longshore & Harbor Workers' Compensation Act*. In reaching this agreement, the parties have considered the present value of all future payments of monetary compensation, impairment benefits and death benefits, potentially payable to the Claimant on account of the accident referenced herein. The Claimant agrees that the settlement drafts may be sent to his attorney, and his attorney agrees to accept them for the Claimant.

The Claimant and the Employer/Carrier agree that this lump-sum settlement is based upon the Claimant's contention that the impairment to his neck and back as a result of the October 12, 1999 incident is 10%, as opined by Dr. Tejeiro. This settlement is also based to a large degree on the Claimant's representations that his alleged neck and back injuries will either

prevent him from returning to work as a longshoreman resulting in a loss of wage earning capacity, or if he is able to return to work as a longshoreman, that he will not be able to work as many hours or days as a result of his alleged injuries, causing him to suffer a reduction in his wage earning capacity.

Accordingly, if the Claimant returns to work as a longshoreman after this settlement agreement is approved, and suffers a re-injury or permanent aggravation of any alleged injury which is the subject matter of this settlement, then the parties agree that the subsequent employer will be entitled to a credit toward any future claim for permanent partial disability benefits or permanent total disability benefits for the monies paid as a result of this 8(i) settlement. The parties agree and stipulate that this credit toward future permanent partial disability benefits and/or future permanent total disability benefits will only be enforceable if the subsequent employer is Oceanic Stevedoring Co., or any other Signal Mutual Indemnity Association Ltd., member, including but not limited to, Universal Maritime Service, APM Terminals, Continental Stevedoring, Eller-ITO Stevedoring, Ltd., R.O. White, South Stevedoring, POMTOC, Florida Stevedoring, South Florida Terminals, Eller & Co., Crowley Liner Services, P & O Ports, Inc., and/or their subsidiaries or parent companies, and any other Signal Mutual Indemnity Association Ltd., member. The other members of Signal Mutual Indemnity Association are included in this Agreement because Signal is a self-insured group mutual where all members share collective responsibility and liability for each other's losses.

If the Claimant has a subsequent injury while working in the course and scope of his employment as a longshoreman with any of the above employers or a Signal Mutual Indemnity Association, Ltd., member, where he alleges an additional permanent impairment to the neck and/or back, then that employer or Signal member will be entitled to a credit based upon a pre-existing paid permanent partial impairment to the neck and back of 10%. Alternatively, if the Claimant alleges an additional permanent impairment to the neck and back resulting in a loss of wage earning capacity, then that employer or Signal member will be entitled to a credit for monies paid as a result of this settlement specifically earmarked for future loss of wages.

The credit will be determined by employing a pro-rated credit reduction of the future loss of wages settlement amount of \$55,000.00, over the period of up to two (2) years, or 104 weeks. Thus, every week from the date of the approval of this settlement, the subsequent employer's credit will be reduced in the amount of \$528.85, until the date of the re-injury or aggravation of the neck or low back. If the re-injury or aggravation of the Claimant's neck or low back condition occurs two (2) years from the date of the approval of this settlement, then the subsequent employer's credit will be exhausted, or reduced to zero. The purpose of this credit is to avoid double compensation to the Claimant for any loss of wage earning capacity related to his combination off alleged injuries involving his neck and back condition while allowing him the opportunity to attempt to return to work as a longshoreman.

a. Compensation	\$55,000.00
b. Medical (future)	10,000.00

c. Attorney's Fees and Costs	15,000.00
d. Payment of Dr. William Tejeiro's bill	5,000.00
<b>Total</b>	<b>\$85,000.00</b>

**6. If settlement of medical benefits:**

a. Itemization of medical expenses for the past three (3) years: SEE EXHIBIT "B;"

b. Estimate of future medical expenses (include inflation and discount factors):

The Employer/Carrier contends that no future medical care is necessary and that Mr. Daniels has been exaggerating his symptoms. However, the parties agree to set aside \$10,000.00 for future care, and the Employer/Carrier's responsibility for all medical care shall be discharged upon payment of this sum. The Claimant understands that by virtue of this payment, the Employer/Carrier's responsibility for future medical care will be extinguished, and the Claimant will become the obligated primary party for payment of medical services as a result of the work-related injuries described herein.

**7. Reason for settlement (including disputed issues):** It has been the Employer/Carrier's contention throughout the claim that the Claimant can return to work, full-duty, without restrictions, or, alternatively, that Mr. Daniels could return to work in the sedentary duty capacity as provided by Raquelin Fals, M.S., C.D.M.S., in her enclosed labor market survey reports, dated April 23, May 8, May 14, and May 31, 2002, attached hereto as part of Composite Exhibit "A."

It must be emphasized that Mr. Daniels did indeed return to work as a longshoreman for approximately one (1) month, until he was injured in the second accident on June 22, 2000. Moreover, Ms. Fals found that the Claimant was complaining primarily of lumbar pain, rather than cervical pain. This was significant because the October 12, 1999 incident involved alleged cervical injuries, whereas the subsequent event was primarily a lumbar injury.

The equivocal nature of this claim demonstrates why Mr. Daniels would be desirous of putting this matter behind him. The medical evidence in this case demonstrates that Mr. Daniels' alleged neck injuries in connection with the October 12, 1999 incident were pre-existing, and were not related to the incident in question. Rather, the neck condition would be attributable to the subsequent June 22, 2000 incident, and even more so, to the most significant injury, in Dr. Gaetano Scuderi's opinion, which was the assault of July 17, 2000 where Mr. Daniels was struck numerous times about the head while laying unconscious. As Dr. Scuderi found that there were significant cervical injuries as a result of the assault and beating, coupled with a significant prior medical history, the neck injury would not warrant any permanency rating. Moreover, the independent medical examination of neurologist, Alan Herskowitz, M.D., confirmed the significant long history of chronic and recurrent neck and back pain of Mr. Daniels, and that such changes could not be attributed to the accident of October 12, 1999. In addition, Dr. Raul Grosz found that the Claimant's neurological examination was normal, and was essentially the same as the prior 1997 examination, which was also normal. Accordingly, Mr. Daniels had no restrictions on a neurological basis, according to Dr. Grosz. Dr. Steven



Tarkan also confirmed that the ear, nose and throat examination was essentially normal. Accordingly, the Employer/Carrier had been of the opinion that lack of causation was a significant matter with respect to the October 12, 1999 incident.

In addition, should the Claimant return to work at the port for any of the above employers or members of Signal Mutual Indemnity Association Ltd., and re-injure or aggravate his neck or back condition, he will still be entitled to temporary total or temporary partial disability benefits and reasonable and necessary medical benefits related to the re-injury or aggravation of these conditions. The credit would only apply to future permanent total or future permanent partial disability benefits once the Claimant reaches maximum medical improvement.

Given the foregoing, it was in the best interests of both parties to amicably settle the matter given the grave consequences which could have ensued should the ALJ find for either of the parties one way or another. Therefore, the parties decided that, given the countervailing evidence in this case, it would be in the best interests of all involved to amicably resolve this claim.

In addition, should the Claimant return to work at the port for any of the above-named employers or members of Signal Mutual Indemnity Association Ltd., and re-injury or aggravate his neck or back condition, he will still be entitled to temporary total or temporary partial disability benefits and reasonable and necessary medical benefits related to the re-injury or aggravation of these conditions. The credit would only apply to future permanent total or future permanent partial disability benefits once the Claimant reaches maximum medical improvement.

**8. Claimant's Date of Birth:** April 18, 1948

**9. Claimant's ability to work** (including educational background, present work status, work history): The Employer/Carrier contended that Mr. Daniels could return to work full-duty, or alternatively in the sedentary duty capacity as provided by the Employer/Carrier's vocational rehabilitation expert, Raquelin Fals, M.S., who prepared various vocational assessments and labor market surveys dated April 23, May 8, May 14, and May 31, 2001, which are attached hereto as part of Exhibit "A". It must be emphasized that Mr. Daniels returned to work as a longshoreman for approximately one (1) month until he was injured as a result of his subsequent work-related injury on June 22, 2000. Ms. Fals' reports also essentially provide that Mr. Daniels could return to the competitive work force within his physical restrictions and limitations with little or no formal training. Mr. Fals identified a significant number of employment opportunities within Mr. Daniels' alleged restrictions and limitations for employers hiring in the Miami-Dade County, Florida area.

**10. Adequacy of Settlement:** This settlement is adequate in that the parties realize the uncertainties of litigation, and are desirous of resolving this matter without the continued expense and unpredictability of a Formal Hearing.

The credit language of this settlement is also fair and reasonable. At least one (1) of the Claimant's doctors has recommended that he no longer engage in the career as a longshoreman. Despite this, the Claimant does not wish to foreclose his ability to attempt to return to work as a Longshoreman. Accordingly, providing a prorated credit for this settlement toward a claim for future loss of wages related to the Claimant's neck and back for a

period of two (2) years allows the parties to compromise on this claim. In addition, the agreement and potential future credit is fair and reasonable because it is limited to future claims concerning the neck and back condition, for two (2) years only, and does not prohibit the Claimant from attempting to work as a longshoreman. The agreement is also fair and reasonable in that it does not require the Claimant to pay back any portion of the settlement if he does in fact return to work as a longshoreman even though such language has been approved in other settlements.

For example, in Hanno v. Stevedoring Services of America, 29 BRBS 869 (1995), the claimant and employer reached an 8(i) settlement. A provision in the agreement provided that in return for being released from all liability for a work-related shoulder injury, the employer and carrier would pay an agreed upon amount to various parties including the claimant and his union. The agreement implicitly contemplated malingering by the claimant and added a provision that stated that if the claimant became able to perform longshore work in the future, and in fact performed such work for the employer in that case, then the claimant would have to repay to the employer and carrier a total of \$15,000.00 if such re-employment occurred before January 1, 2005, and the sum of \$10,000.00 if the re-employment occurred after January 1, 2005. The agreement in that case also had a provision that stated, “this provision is deemed fair and reasonable given the settlement lump sum is based on the representation by [the claimant] that he is permanently precluded from performing longshore work in the future and that as a result has suffered a permanent loss of wage earning capacity.”

In Hanno, the Director tried to intervene by way of a motion for reconsideration generally based upon the argument that including language that required the claimant to potentially pay back some of the proceeds of the settlement agreement, rendered the settlement amount uncertain and discriminatory. The ALJ held that there was little to show that Congress did not intend for settlement agreements to allow for “future contingencies.” Simply put, if a claimant is able to return to work, then the amount of disability to the claimant was less than presumed. Consequently, it was proper to provide for this contingency by contract. In addition, ALJ reasoned that allowing the claimant to return upon the partial repayment of her lump sum award showed an absence of punitive design, because it was allowing the claimant to return to her former capacity without the total repayment of all benefits. In light of this reasoning, the ALJ held the agreement was enforceable.

Just as in Hanno, the settlement language contained in this 8(i) agreement takes into account future contingencies, but merely for two (2) years. Similarly, as in Hanno, this settlement agreement allows the Claimant to return to work at the port in this former capacity without the repayment of benefits, and only provides a pro-ration credit to Signal employers depending upon when, and if the Claimant return to work as a longshoreman. It also prevents the Claimant from making a double recovery with respect to the claim of a loss of wage earning capacity related to any one or combination of injuries arising out of these claims involving the neck and back condition, for up to a two (2) year period. This agreement, however, does not prevent the Claimant from seeking and obtaining future medical care and attention related to any subsequent aggravation of these conditions if and when he returns to work as a longshoreman. Nor does the agreement prevent the Claimant from seeking and obtaining temporary total or temporary partial disability benefits related to any on the job

aggravation or re-injury of these conditions with any subsequent Signal employer. The only time the credit will come into effect is when a claim for future loss of wage earning capacity is made concerning any future on the job injury to the neck and back condition while working as a longshoreman with Oceanic Stevedoring or its parent company or subsidiaries or any other employer who is a Signal member. Accordingly, the agreement is fair and enforceable.

Were this matter to proceed to a Formal Hearing, the Employer and its Carrier contend that Claimant would not have been entitled to any additional temporary total disability benefits, temporary partial disability benefits, permanent partial disability benefits, permanent total disability benefits, loss of wage earning capacity, or medical benefits. The Employer and its Carrier further contend that the medical and vocational evidence adduced to date reveals that Claimant is able to return to work either in his previous capacity as a longshoreman at the port or in suitable alternate employment within his geographical region and work restrictions.

The parties in *Jeremiah Daniels v. Eller-ITO Stevedoring Company and Signal Mutual Indemnity Association*, OWCP No: 6-182891, have stipulated to the following:

### **I. Disputed Issues**

The issues presently in dispute are the Claimant's average weekly wage and compensation rate, entitlement to any additional temporary total disability benefits, entitlement to additional temporary partial disability benefits, entitlement to additional permanent partial disability benefits, entitlement to permanent total disability benefits, whether the claimant has suffered a loss of wage-earning capacity related to his alleged back and neck injury, whether the current alleged injuries are causally related to the June 22, 2000, incident, whether the Employer and its Carrier is entitled to 8(f) relief, penalties, interest, costs and attorney fees.

**1. Average Weekly Wage:** Employer and its Carrier assert that Mr. Daniels' average weekly wage and compensation rates have been properly calculated based upon the actual fifty-two (52) weeks earning of Claimant immediately prior to the subject accident. Claimant contends that his average weekly wage is inaccurate. The Claimant also contests his compensation rate.

**2. Temporary Total Disability Benefits:** The Employer/Carrier contends that the Claimant has received full compensation for his benefits from the June 22, 2000 accident up through the cutoff date of October 25, 2000. Claimant seeks additional Temporary Total Disability benefits.

**3. Temporary Partial Disability Benefits:** The Employer/Carrier contends that the Claimant has received full compensation for his benefits from the June 22, 2000 accident up through the cutoff date of October 25, 2000. Claimant seeks additional Temporary Partial Disability benefits.

**4. Permanent Partial Disability Benefits:** The Employer/Carrier denies that the Claimant is entitled to any permanent total disability, as he suffered only a temporary aggravation of a pre-existing condition.

**5. Permanent Total Disability Benefits:** The Employer/Carrier denies that the Claimant is entitled to any permanent total disability, as he suffered only a temporary aggravation of a pre-existing condition. Claimant alleges that he is permanently and totally

disabled and that his combined injuries prevent him from returning to work in any capacity at the port as a longshoreman with or without reasonable accommodations now or in the future and is entitled to Permanent Total Disability Benefits.

**6. Loss of Wage Earning Capacity:** Employer/Carrier contends that the Claimant has reached maximum medical improvement with respect to the June 22, 2000, incident. Mr. Daniels had only a temporary aggravation of a preexisting condition and it has since resolved. Alternatively, the Claimant at all times was able to return to work in suitable alternate employment outside of the port with minimal loss of wage earning capacity. Claimant alleges that the June 22, 2000, incident has left him permanently and totally disabled and that he is not able to return to gainful employment in any capacity.

**7. Section 8(f):** Employer/Carrier contends that Mr. Daniels has not suffered any type of permanent impairment with regard to his longshore incident of June 22, 2000. However, if it is ultimately determined that, in fact, he has suffered a permanent impairment, Employer/Carrier assert that if the Claimant is permanently partially and/or permanently totally disabled, his present disability is not due solely to his alleged injury on June 22, 2000. Rather any present disability is the combined or sole result of the Claimant's parade of the preexisting low back and neck injuries which occurred as a result of Claimant's two prior automobile accidents, June 20, 1997, work accident, October 12, 1999, work accident, and the objective findings documented in the medical records, coupled with opinions of Dr. Grosz, Dr. Stein, and Dr. Tejeiro. The Employer/Carrier further contend that Mr. Daniels' present disability is materially and substantially greater than that which would have resulted from his alleged June 22, 2000, injury alone. Hence, the, the Employer and it's Carrier's liability for compensation payments for such disability should be limited from the date on which Mr. Daniels' condition reached maximum medical improvement, in accordance with the provisions of Section 8(f) of the Act.

**8. Medical Bills:** Employer/Carrier assert that all medical bills causally related to the Claimant's alleged temporary aggravation of his preexisting condition of June 22, 2000, have been paid pursuant to the OWCP medical fee schedule pursuant to 28 C.F.R. § 702.413-414, as amended. Consequently, no further medical bills are due and owing. Claimant alleges entitlement to reimbursement for medical treatment.

**9. Penalties, Interest, Costs and Attorney's Fees:** Claimant seeks penalties, interests, costs and attorney's fees. The Employer/Carrier contends that no penalties, interests, costs and/or attorney's fees are owed for this claim arising from the accident on June 22, 2000.

## **II. Agreed Statement of Fact**

**1. Date and Description of Incident:** Mr. Jeremiah Daniels was born on April 18, 1948, making him approximately 54 years of age. The alleged incident which gives rise to this claim occurred on June 22, 2000. However, because section 8(f) is at issue in this case as well as causation, the Claimant's injuries are set forth in chronological order beginning with the first of many injuries (four prior injuries) that the Employer and it's Carrier assert supports preexisting relief pursuant to Section 8(f). The Claimant's present neck problems relate to an altercation that he was in on July 17, 2000, during which he was beaten and robbed by four men at a gas station. This altercation took place outside work and had no relation to any work related activity of the Claimant. However, due to this altercation, and not the temporary

aggravation of the preexisting symptomatology of the Claimant due to the alleged incident of June 22, 2000, the Claimant is unable to work as a longshoreman.

***First Prior Neck and Back Injury/ Automobile 1992***

Mr. Daniels first injured his neck and back in 1992 when he was involved in an automobile accident. Following the automobile accident, Claimant received treatment from Dr. Moise for “a significant period of time and [missed] several months of work.” Claimant’s condition improved after the accident but he did not become asymptomatic. He eventually returned to work with symptoms.

***Second Prior Neck and Back Injury/ Automobile 1992***

Mr. Daniels injured his back a second time in a second automobile accident. Dr. Moise once again treated Claimant for his injuries following the second automobile accident for a “good period of time” and Mr. Daniels missed approximately two or three months of work. Eventually, Claimant did return to work but pre-selected his jobs at the Port of Miami by calling in the morning to determine whether he could complete the work assigned for that day. Following the second injury, Claimant was unable to sleep comfortably and oftentimes had to take medication that was prescribed by Dr. Moise.

***Third Prior Back and Neck Injury/ Work Related Incident of 1997***

A third injury to Claimant’s neck and back occurred while Claimant was working onboard the vessel MAERSK MARACAIBO at the Port of Miami on June 20, 1997. The accident occurred when a container was accidentally lifted into the air because one of the twist locks on the container was still locked and remained attached. As a result, the container was lifted into the air before the twist lock came loose and the container fell to the ground. Claimant was injured when he ran away from the container and struck his forehead. Following this incident, Mr. Daniels was treated at the Port of Miami Medical Clinic by Dr. I.M. Potash. Dr. Potash diagnosed Claimant with a contusion to the head, a neck sprain, aggravation of his back, and a laceration to his forehead. Claimant was placed on no-work duty status and was referred to physical therapy. On September 2, 1997, a neurological evaluation was completed of Claimant by Dr. Raul Grosz. At this time, Claimant’s neck and back complaints were indistinguishable from those at present. Ultimately, an orthopedic evaluation of the Claimant was performed by Dr. Jay Stein on September 30, 1997. During this evaluation, Mr. Daniels was unable to state how far he could walk, but he could not sit in a chair for more than an hour or stand for more than ten (10) minutes. Dr. Stein further noted that Claimant had trouble sleeping and chronic neck/low back symptoms for five (5) years prior to the June 20, 1997 accident and would likely continue to have the same symptoms after the accident.

***Fourth Prior Back and Neck Injury/ Work Related Incident of 1999***

Mr. Daniels suffered yet another fourth injury to his neck and low back on October 12, 1999, while working for Oceanic Stevedoring at the Port of Miami. The injury occurred when Claimant was hit by an iron hook in the face, causing him to fall backwards into a pile of lumber, injuring his neck and lumbar spine and briefly knocking him unconscious. Following the October 12, 1999, incident, Mr. Daniels was treated by Dr. Potash at the Port of Miami Medical Clinic. Dr. Potash diagnosed Claimant with a concussion as well as a contusion to the face. As in the 1997, injury, Dr. Raul Grosz once again evaluated Claimant from a neurological standpoint on November 9, 1999. Mr. Daniels complaints of back pain and headaches

returned. Dr. Grosz diagnosed Claimant with a concussion which resulted from being struck in the head. On November 16, 1999, Dr. Potash altered his diagnosis to include a left shoulder and back injury.

On December 21, 1999, the Claimant was examined by Dr. William B. Tejeiro who diagnosed the Claimant as suffering from a cervical area whiplash, torticollis, low back pain and cervical and lumbar radiculitis. Dr. Tejeiro has testified that the cervical injury of October 12, 1999 has caused a permanent aggravation of a pre-existing neck condition due to the presence of a bulging disc in the Claimant's neck that apparently was not present following the Claimant's 1997 injury and treatment with Dr. Jay Stein. Dr. Tejeiro has further testified that in April of 2000, he advised the Claimant that as a result of his alleged neck injury relating to the incident of October 12, 1999, that he should probably try to obtain an alternative job outside the Port.

***Alleged Incident of June 22, 2000, at issue in this case.***

The Claimant ignored prudent medical advice to the contrary and returned to work at the Port of Miami following his October 19, 1999, incident. Two (2) months later, the incident which is at issue in this case occurred. On June 22, 2000, Mr. Daniels was working for Ellor-ITO Stevedoring Company at the Port of Miami as a Longshoreman. Mr. Daniels alleges he injured his neck and low back while pulling a trailer stand. Specifically, Claimant alleges that he was bent over pulling on a trailer stand when he felt sudden back pain causing him to fall to his knees. Immediately following the accident, Claimant complained of pain in his mid and low back. Subsequently, Claimant has also alleged he suffered an injury to his neck and head.

Mr. Daniels was initially treated for his low complaints by Dr. William Tejeiro on the day after his alleged incident. X-rays and a bone scan of Claimant's back were obtained. In the face of a bone scan negative for compression fracture, Dr. Tejeiro diagnosed Claimant with low back pain, sacroilitis and a "healed" compression fracture. Dr. Tejeiro has testified that the Claimant can return to work in his former capacity and that the June 22, 2000, incident was a temporary exacerbation of a preexisting condition.

The Employer/Carrier sought an Independent Medical Examination on September 29, 2000, by Dr. Anthony Dorto. Dr. Dorto diagnosed Claimant with subjective complaints of neck pain, no neurological deficits and a thoracolumbar sprain/strain with no evidence of radiculopathy. He further stated that the Claimant had reached maximum medical improvement as of August 3, 2000, and that the Claimant had a zero percent impairment rating.

***July 16, 2000, non-work related injury***

In addition to the Claimant's prior complaints, the Claimant was involved in an altercation on July 17, 2000, during which he was beaten and robbed by four (4) men at a gas station while getting gas in the vehicle of a female friend. This altercation resulted in a neck injury to the Claimant. Due to this neck injury, the Claimant is unable to work in his former capacity as a longshoreman. It is uncontested that this altercation was not related to the Claimant's work in any way.

**2. Nature of Injury** (including degree of impairment and/or disability): Mr. Daniels is alleging injury to his neck and low back as a result of the alleged incident on June 22, 2000. He was treated by Dr. William Tejeiro on June 23, 2000. At that time, the Claimant

complained of pain in his low back without any radicular symptoms. X-rays of Claimant's back were obtained and were questionable for mild compression deformities at the L2-L3 level. Dr. Tejeiro eventually diagnosed Claimant with low back pain, sacroiliitis (an inflammation of the sacroiliac joint), and a compression fracture at the L2-L3 level. On May 1, 2001, Dr. Tejeiro opined that the Claimant has a 20% total impairment rating to the body as a whole as a result of the combination of all injuries.

Dr. Anthony Dorto examined Claimant on September 29, 2000. Mr. Daniels complained of pain in his posterior neck and low back that was radiating into his thoracic spine. Dr. Dorto diagnosed Claimant with subjective complaints of neck pain with no neurological deficit and thoracolumbar sprain/strain with no evidence of radiculopathy. He further opined that Dr. Tejeiro's diagnosis of compression fracture was wrong because a fracture would be evident on a bone scan for six (6) to twelve (12) months and Claimant's bone scan was negative six (6) weeks after the incident.

**3. Description of Medical Care:** Mr. Daniels was initially evaluated on the day following his alleged incident of June 22, 2000. It was completed by Dr. William Tejeiro. In the course of the evaluation, Mr. Daniels gave a history of injuring his low back while at work lifting a heavy weight. At the time of the examination, Claimant complained of severe persistent pain in his low back without any radicular symptoms such as: tingling or numbness; normal deep tendon reflexes; and no bowel/bladder problems. X-rays of Claimant's spine were obtained and were interpreted as revealing a questionable mild compression deformity at the L2-L3 level. Dr. Tejeiro diagnosed Claimant with low back pain, questionable compression fractures at the L2-L3 level and sacroiliitis. Mr. Daniels was fitted for a lumbosacral corset and was referred to physical therapy. Dr. Tejeiro prescribed medication and recommended that Claimant have a bone scan completed on his lumbar spine after a week had expired from the date of injury.

On July 25, 2000, Mr. Daniels returned for further treatment with Dr. Tejeiro. A bone scan had not been completed but had been approved by Employer/Carrier on July 10, 2000. Dr. Tejeiro opined that the bone scan would likely be negative because the bones would have healed by the time a bone scan could be performed. Claimant stated that the pain in his low back had decreased and he had improved range of motion. Dr. Tejeiro diagnosed Claimant with low back pain, sacroiliitis and a compression fracture at the L2-L3 level. Mr. Daniels was released to work with lifting of up to fifteen pounds. Dr. Tejeiro recommended that Claimant continue with his physical therapy and medication.

Mr. Daniels received physical therapy on thirty-six (36) occasions between June 26, 2000, and September 25, 2000. Treatment of Claimant included use of hot packs, electrical stimulation, ultrasound, therapeutic exercises, massages, and manual therapy. Claimant expressed complaints of back and neck pain all of his physical therapy treatments. At best, the treatments did seem to slightly improve Claimant's condition.

Dr. Tejeiro last saw Claimant on September 12, 2000. At that time, a bone scan had been completed and was negative for compression fractures in the spine. Dr. Tejeiro opined that the fractures had probably already healed because the bone scan was completed six (6) weeks post accident. Mr. Daniels had an increased range of motion and decreased complaints of pain. He denied any radicular symptoms in his lower extremities. An examination of

Claimant revealed tenderness at the L2-3 level, tenderness over the sacroiliac joints bilaterally, improved range of motion, negative straight leg raising, and normal sensation. Mr. Daniels was diagnosed with low back pain, sacroiliitis and healed compression fractures. He was released work with lifting of up to fifty pounds (50lbs.) but was continued on his medication and physical therapy.

An independent medical evaluation of Claimant was completed by Dr. Anthony Dorto on September 29, 2000. At that time, Claimant complained of pain in his posterior neck and low back with pain radiating to the upper thoracic spine. An examination of Claimant revealed: range of motion of 50 degrees flexion, 60 degrees extension, 75 degrees right rotation, 60 degrees left rotation and 30 degrees right/left side bending; normal toe/heel walk; normal sensation; normal reflexes; no atrophy in the upper or lower extremities; negative straight leg raising in the seated position, but positive in the supine position at 30 degrees; negative Patrick maneuver; negative Tinels test; subjective tenderness to palpation of the cervical and thoracic spine with no spasms; and no evidence of sciatic notch tenderness. Dr. Dorto diagnosed Claimant with: (1) subjective complaints of neck pain with no neurological deficit and (2) thoracolumbar sprain/strain with no evidence of radiculopathy.

Dr. Dorto further opined: (1) Claimant's passive physical therapy had outlived its usefulness and he should receive more active therapy; (2) inconsistencies were found in Claimant's complaints of pain on the straight leg raising and hip rotation tests; (3) Claimant's subjective complaints were not consistent with the objective findings; (4) Claimant had normal strength, range of motion, sensation and reflexes in both upper and lower extremities; (5) Claimant most likely reached maximum medical improvement on August 3, 2000; (6) the bone scan was negative for lumbosacral fractures and Dr. Dorto opined that a bone scan would be positive for six to twelve months after an accident if there was a fracture; (7) no evidence to support Dr. Tejeiro's diagnosis of spinal compression fracture; (8) sub-maximal effort given by Claimant during the functional capacity evaluation; (9) Claimant released to return to work full time in his prior position; (10) zero percent permanent impairment rating according to the AMA guidelines.

**4. Compensation Paid:** Claimant's average weekly wage of \$337.98 equates into a compensation rate of \$225.32.

The Employer/Carrier contends that the Claimant has received full compensation for his benefits from the June 22, 2000 accident up through the cutoff date of October 25, 2000. All medical bills from authorized treating physicians causally related to Mr. Daniels' June 22, 2000, claim have been paid. By executing this agreement, Claimant affirmatively adopts the Employer/Carrier's assertions set forth in this "paragraph 4." of this agreement.

**5. Terms of Settlement:** Claimant and the Employer/Carrier have expressly agreed that all past benefits due and owing to Claimant for the injuries alleged in the incident of June 22, 2000, have been paid. In addition, Claimant has agreed to waive his right to any future Longshore and Harbor Workers' Compensation benefits payable as a result of the alleged injuries and incidents referred to herein and made a part of this Settlement Agreement in return for the Employer Eller-ITO Stevedoring Company, and its Carrier, Signal Mutual Indemnity Association, Ltd., agreeing to pay Claimant a lump sum of \$7,500. This Settlement



Agreement, therefore, represents any and all potential or actual temporary total or temporary partial disability compensation, wage loss benefits, medical benefits, transportation reimbursement, permanent partial or permanent total disability compensation, rehabilitation benefits, and attendant care benefits arising from the June 22, 2000, incident under the Longshore and Harbor Workers' Compensation Act, to which Claimant might presently be entitled, or to which he may in the future become entitled to receive from the Employers and their Carrier under the provisions of the Act.

The parties agree that the Claimant did not sustain any permanent partial disability as a result of the accident of June 22, 2000 and that any disability sustained by the Claimant is attributable to the prior accident of October 12, 1999. The indemnity being paid to the Claimant in settlement of this case is attributable to temporary total disability and if amortized by the compensation rate of \$225.52 would be for a period of 55.48 weeks from October 25, 2000, the original cut off date of compensation, and through November 21, 2001. Therefore, the parties have compromised this claim as hereinafter set forth.

The parties agree that all reasonable and necessary past medical benefits from authorized providers related to the injuries and incidents alleged herein have been paid.

The Claimant understands that both he and the Employer/Carrier are under no obligation to settle and close out this LHWCA claim; however, the Claimant believes that this lump sum settlement, including the closure of medical care, is in his best interest.

The parties agree that this Settlement Agreement shall be consider null and void if the Claimant dies prior to the Settlement Agreement being approved and filed by the District Director. Either party may withdraw from this Settlement Agreement at any time prior to it's approval for any reason including but not limited to fraud, duress, undue influence, unilateral mistake, or a change in condition. Withdrawal will be effective upon service of written notice of either party's intent to withdraw on counsel for the other party making this Settlement Agreement null and void as of that date. The parties further agree that this Settlement Agreement shall not become binding or enforceable until it has been approved by the Administrative Law Judge and filed by the District Director.

a. Past Temporary Disability Benefits	\$7,000.00
b. Medical (future)	500.00
c. Representative's Fees	5,000.00
<b>Total</b>	<b>\$12,500.00</b>

**6. If settlement of medical benefits:**

- a. Itemization of medical expenses for the past three (3) years: SEE ATTACHED.
- b. Estimate of future medical expenses (include inflation and discount factors): In the unlikely event that additional treatment for the injuries allegedly suffered as a result of the June 22, 2000, incident including, but not limited to, the Claimant's low back

condition and pain, neck condition and pain, headaches, and/or any other physical or psychiatric condition, \$500.00 of the settlement proceeds are earmarked for such an occurrence.

**7. Reason for Settlement** (included disputed issues): As previously indicated, this matter has been strongly contested by the Employer/Carrier. The Employer/Carrier contend that the Claimant's current alleged inability to return to work is not causally related to his alleged incident of June 22, 2000. The Employer/Carrier further contend that Claimant is and was capable of returning to work in his former capacity as well as in suitable alternate employment outside of the port upon reaching maximum medical improvement August 3, 2000. Claimant was paid all temporary total, temporary partial, and/or permanent partial disability benefits due.

With respect to permanent total disability benefits and loss of wage earning capacity, the Claimant, the Employer and its Carrier contend and agree that due to the Claimant's pre-existing symptomatology, the Claimant is not able to return to work in any capacity as a longshoreman now or in the future even with reasonable accommodations and that such employment creates a danger to the Claimant and others working with or around him. The Employer and its carrier contend, however, that suitable alternate employment outside of the port was and is available to Claimant within his geographical area and work restrictions as evidenced by the opinions of Dr. Dorto.

Claimant, on the other hand, claims that he has, in fact, suffered a permanent and/or disabling condition with respect to his low and neck back which is causally related to his work incident and that this injury or injuries have left him permanently and totally disabled. He further contends that he is unable to work on a regular or continuous basis in any capacity in or outside of the longshore arena even with reasonable accommodations now or in the future.

In light of the dispute between the parties with respect to the above-referenced issues, all parties feel that it is in the best interests of Claimant and the Employer/Carrier to resolve all claims within the jurisdiction of the Longshore and Harbor Workers' Compensation Act for the lump sum settlement of \$7,500.00, inclusive of medical and compensation benefits and rehabilitation benefits for all pending Longshore and Harbor Workers' Compensation claims of the Claimant against his Employer, in accordance with the terms and conditions set forth above. This will allow the parties to resolve this dispute in a fair and equitable manner and allow the Claimant to move forward with his claim for retirement and/or disability benefits from the union and/or move on and attempt to return to gainful employment in some other capacity.

**8. Claimant's Date of Birth:** April 18, 1948.

**9. Claimant's Address:** Claimant attests that 14250 N.W. 22<sup>nd</sup> Court, Opa-Locka, Florida 33054, as listed in the Proof of Service contained herein, is his true and correct address.

**10. Claimant's Ability to Work** (including educational background, present work status, work history, if applicable): As indicated above, the Claimant is unable to return to work as a longshoreman as a result of a non-work-related altercation that occurred on July 16, 2000 and only suffered a temporary aggravation of a pre-existing condition related to this incident. The Claimant is a high school graduate with the ability to read and write. He has a limited

background in wood working and carpentry from high school. Suitable alternate employment has been identified by the Employer, Oceanic Stevedoring in the 1999 claim which is the subject matter of a separate 8(i) agreement.

**11. Adequacy of Settlement:** The settlement is fair and reasonable in light of the contested issues concerning causation, temporary total disability benefits, temporary partial disability benefits, permanent partial disability benefits, permanent total disability benefits, loss of wage earning capacity, causation, aggravation of a pre-existing condition, and penalties, interest, costs, and attorney's fees.

In light of these disputed issues and the medical evidence, this Settlement Agreement is adequate in that it provides Claimant with additional sums with respect to his claim for temporary total disability benefits. This Settlement Agreement also provides Claimant with sufficient sums in the unlikely event that further medical treatment is necessary in the future for his June 22, 2000 temporary exacerbation of a pre-existing injury.

Were this matter to proceed to a Formal Hearing, Employer/Carrier contend that Claimant would not have been entitled to any additional temporary total disability benefits, temporary partial disability benefits, permanent partial disability benefits, permanent total disability benefits, loss of wage earning capacity, or medical benefits. Employer/Carrier further contends that the medical evidence evinces that the Claimant had a temporary exacerbation of a preexisting injury that has resolved and that the Claimant could return to work if not for his unfortunate non-work-related altercation on July 16, 2000.

In light of these disputed issues and the medical evidence, this Settlement Agreement is adequate in that it provides Claimant with additional sums with respect to his doubtful and disputed claim for permanent partial and permanent total disability benefits. This Settlement Agreement also provides Claimant with sufficient sums in the unlikely event that further medical treatment is necessary in the future for the injuries arising from his June 22, 2000 incident.

In support of the fee request, counsel for Claimant advises that he has been practicing law since June, 1958, with a specialty in Personal Injury, Maritime Law, Workers' Compensation and cases arising under the Longshore and Harbor Workers' Compensation claims. An itemized statement of the extent and character of the necessary legal services performed was submitted. Claimant's counsel has expended a total of 138.52 hours on this case.

I have reviewed the claim file, the documents presented and the stipulations submitted. I note that the attorneys fee is reasonable and necessary for the services performed. As this is a stipulation before the Office of Administrative Law Judges, approval by the District director is unnecessary. Upon careful review of the documents provided, I accept the stipulation and make the following findings and conclusions:

#### ***FINDINGS OF FACT And CONCLUSIONS OF LAW***

The following findings of fact and conclusions of law are made:

1. Both of the agreed settlements are adequate and have not been procured by duress.

2. Settlement in the amounts set forth in the Stipulations is hereby approved and the parties are directed to carry out the requirements of each settlement.
3. The liability of Oceanic Stevedoring Co. and its Carrier for all past and future installments of compensation under the *Longshore and Harbor Workers' Compensation Act* as a result of the Claimant's alleged incident of October 12, 1999, which made the basis of this claim, will be discharged upon the receipt of \$55,000.00 from the Employer and its Carrier. The file of OWCP No. 6-180911, OALJ No. 2001-LHC-3143, *Jeremiah Daniels v. Oceanic Stevedoring Co. and Signal Mutual Indemnity Association, Ltd.* will be closed upon payment of \$55,000.00.
4. The liability of Eller-ITO Stevedoring Company and its Carrier for all past and future installments of compensation and medical benefits, attorney's fees and costs under the *Longshore and Harbor Workers' Compensation Act*, as a result of Claimant's incident on June 22, 2000, will be discharged upon Claimant's receipt of \$7,500.00 from the Employer and its Carrier. The file of OWCP No. 6-182891, OALJ No. 2001-LHC-3143, *Jeremiah Daniels v. Eller-ITO Stevedoring Company and Signal Mutual Indemnity Association, Ltd.* will be closed.
5. Oceanic Stevedoring Co. and its Carrier's responsibility for all future expenses for reasonable and necessary medical treatment causally related to the Claimant's alleged incident of October 12, 1999 will be discharged upon receipt of \$10,000.00.
6. Oceanic Stevedoring Co. and its Carrier's responsibility for past medical benefits is hereby discharged upon payment of \$5,000.00 to William V. Tejeiro, M.D.
7. Eller-ITO Stevedoring Company and its Carrier's responsibility for all future expenses and medical treatment causally related to Claimant's alleged incidents and injuries, as referred to in paragraph four (4), and more fully described in the 8(i) Settlement, will be discharged on the same conditions as are stated in paragraph four (4) above.
8. Attorney's fees and costs will be paid by Oceanic Stevedoring Co. and its Carrier to Claimant's attorney, Howard L. Silverstein, Esquire, in the amount of \$14,190.39 and costs in the amount of \$809.61.
9. Attorney's fees and costs of \$5,000.00 will be paid by Eller-ITO Stevedoring Company and its Carrier to the Claimant's attorney, Howard L. Silverstein, Esquire. These proceeds satisfy, in full attorney's fees and costs related to the incident referred to herein.

**Now, therefore,** under 33 U.S.C. Section 908(i), the settlement is approved, and the terms of settlement are **ACCEPTED** upon the Findings and Conclusions set forth above.

**SO ORDERED**

**A**

Daniel F. Solomon  
Administrative Law Judge

